Filed 3/20/09 Quillar v. Nielsen CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

LEE V. QUILLAR, Plaintiff and Appellant, v. TAMMY L. NIELSEN et al., Defendants and Respondents.	D053142 (Super. Ct. No. 37-2007-00082024-CU-PO-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Ronald S. Prager, Judge. Affirmed.

Lee Quillar appeals from a judgment of dismissal following the sustaining of a demurrer without leave to amend in favor of defendants.[1] We affirm.

1 The defendants in the complaint are named as Tammy L. Nielsen, Kathleen Koman, and M.C. Del Toro.

Overview

In 1997 Quillar was convicted of various criminal charges and received an indeterminate life sentence. He was represented by appointed counsel on appeal, and in 1999 our court affirmed his convictions. Seven years later, Quillar, representing himself, filed a petition for writ of habeas corpus in this court claiming that he was not present at three pretrial hearings in his criminal case and requesting that he be provided with reporter's transcripts for those hearings. In February 2007, we denied his habeas petition, issuing a written ruling delineating our reasons. In November 2007, Quillar, representing himself, filed a civil complaint against the court clerks and court reporter who prepared the documents relevant to the three pretrial hearings, raising the same allegation that he was not present at the hearings and requesting that he be provided with reporter's transcripts. The trial court sustained the defendants' demurrer without leave to amend and entered a judgment of dismissal. Based on the collateral estoppel effect of our previous denial of Quillar's petition for writ of habeas corpus, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND[2]

In 1997, a jury convicted Quillar of unlawfully causing a fire of an inhabited structure, arson of property, assault with a deadly weapon or by means of force likely to produce great bodily injury, and false imprisonment by violence with the personal use of a deadly weapon. He was sentenced to an indeterminate life sentence. On appeal from his conviction, he was represented by appointed counsel. In November 1999, we affirmed his convictions. (*People v. Quillar* (Nov. 9, 1999, D029778) [nonpub. opn.].)

After his convictions were affirmed on appeal, Quillar, representing himself, filed numerous pleadings before the superior court, the appellate court, the California Supreme Court, and the federal court raising various matters concerning his criminal case. These pleadings included three petitions for a writ of habeas corpus and a petition for writ of mandate filed in 2001 through 2005 before our court. These petitions were denied.

---

2 We take judicial notice of the previous appeal and petitions for writ of habeas corpus concerning Quillar's criminal case. Quillar has also filed a request for judicial notice. We grant his request to the extent it includes documents contained in court files, and deny it to the extent it includes documents that were not filed in court. (*Doers v. Golden Gate Bridge etc. Dist*. (1979) 23 Cal.3d 180, 184-185, fn. 1; *Vons Companies, Inc. v. Seabest Foods, Inc*. (1996) 14 Cal.4th 434, 444, fn. 3 [absent exceptional circumstances, reviewing court only considers matters presented to trial court].) We have reviewed the filed documents he has provided and find nothing to alter our conclusion that collateral estoppel applies to bar the civil complaint.

We also grant defendants' motion to strike the documents filed by Quillar under the heading of "Exhibit A-Declaration of Lee V. Quillar with Attachment Pages 1-19." These documents include communications between Quillar and various persons concerning his requests for reporter's transcripts. Quillar has not shown that these documents were filed with the trial court, and there are no exceptional circumstances warranting our consideration of them for the first time on appeal.

On October 23, 2006, Quillar filed another petition for writ of habeas corpus before our court which included an allegation that he "was denied counsel during arraignment, and forced to represent himself . . . while undergoing psychiatric treatment." Specifically, he alleged that (1) at his arraignment on July 10, 1996, when he was not present, the trial court relieved appointed defense counsel and "'forc[ed]'" him into self-representation at a time when he was undergoing psychiatric treatment; (2) at a hearing on August 14, 1996, when he was not present, the trial court "'pretentiously appointed'" an attorney as cocounsel to his "forced . . . pro per status"; and (3) at a hearing on August 20, 1996, when he was not present, the trial court withdrew his pro. per. status and appointed counsel to represent him. He submitted documentation showing that he was admitted to a psychiatric facility on June 11, 1996, and discharged on June 15, 1996, and that he was treated at a psychiatric hospital and other facilities on various dates between June 10, 1996, and October 21, 1997. He contended the superior court judge had "manipulated court documents to make it appear" that he was present at the three hearings. He stated that his rights had been violated and requested that he be provided with reporter's transcripts for the July 10, August 14, and August 20, 1996 hearings.[3]

---

3 The transcripts for these hearings were not included in the record filed for his appeal from his conviction. However, the record filed for his appeal does include a reporter's transcript for a second arraignment on August 12, 1997, following a second amended information filed by the district attorney. The reporter's transcript of the August 12, 1997 proceeding shows that Quillar was present at the second arraignment, that he was represented by counsel, and that he pleaded not guilty to the second amended information.

On February 27, 2007, we denied Quillar's habeas petition. In our written ruling, we took judicial notice of the appeal and previous writ petitions filed by Quillar. We reviewed the minute orders for the three pretrial hearings as follows: "The minute order of the arraignment hearing on July 10, 1996, shows Quillar was present and represented by the public defender. The minute order reflects Quillar was then given 'pro per privileges,' suggesting he asked to represent himself. The minute orders also show Quillar was present on August 14, 1996, when the court appointed advisory counsel and on August 20, 1996, when he withdrew his pro per status and the court appointed counsel for him." Under the standard applicable when a defendant has filed successive habeas petitions, we concluded that Quillar had not established a fundamental miscarriage of justice. We denied his request for relief, including his request for transcripts.

After we denied his request for habeas relief in February 2007, Quillar filed two petitions for writ of mandate, raising the same claim that he was not present at the three hearings and requesting the reporter's transcripts, and including an allegation that the minute orders for the three hearings were false. In April 2007, we summarily denied the first writ of mandate petition. He filed the second writ of mandate petition before the California Supreme Court, which transferred the matter back to us with instructions to deny the petition if it was substantially identical to the first writ of mandate petition. In May 2007, we dismissed the second writ of mandate petition because it was repetitive.

In November 2007, Quillar, again representing himself, filed a civil complaint naming two court clerks and a court reporter as defendants. The complaint stated he was not present at the July 10, August 14, and August 20, 1996 hearings, and alleged that the

defendants had falsified information in court documents to reflect that he was present at the hearings and had violated his rights by denying him access to the reporter's transcripts for those hearings. He requested a declaratory judgment stating that his rights had been violated, and an order requiring that defendants provide him with the reporter's transcripts and submit an affidavit "stating that the alleged hearings are either true, or not true . . . ."

Defendants filed a demurrer. On April 11, 2008, the trial court sustained the demurrer without leave to amend and entered a judgment of dismissal, citing res judicata/collateral estoppel, litigation privilege, and public policy grounds. To support its ruling, the trial court noted that the complaint requested "declaratory relief in the form of verification of the truthfulness of the minute orders stemming from three separate hearings in a prior criminal trial," and that this claim had been repeatedly pursued by Quillar and denied by the appellate court.

Quillar appeals.

DISCUSSION

When reviewing the sustaining of a demurrer without leave to amend, we exercise our independent judgment to determine whether the complaint states a cause of action. (*Buller v. Sutter Health* (2008) 160 Cal.App.4th 981, 986.) We assume the complaint's properly pleaded or implied factual allegations are true, and also consider judicially noticeable matters. (*Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 320.) The trial court properly concluded that Quillar's complaint fails to state a cause of action because the allegations are barred under the collateral estoppel aspect of the res judicata doctrine.

The res judicata doctrine encompasses claim preclusion (called res judicata) which precludes relitigation of a cause of action finally resolved in a prior proceeding, and issue preclusion (called collateral estoppel) which precludes relitigation of an issue necessarily decided in a prior proceeding on a different cause of action. (*Vandenberg v. Superior Court* (1999) 21 Cal.4th 815, 828-829.) To invoke res judicata or collateral estoppel, the claim or issue in the present action must be identical to the one litigated in the prior proceeding; the prior proceeding must have resulted in a final judgment on the merits; and the party against whom the doctrine is being asserted must have been a party or in privity with a party to the prior proceeding. (*People v. Barragan* (2004) 32 Cal.4th 236, 253.) The claim or issue must have been actually litigated; that is, raised by the pleadings or otherwise, submitted for determination, and determined. (See *People v. Sims* (1982) 32 Cal.3d 468, 484.) Res judicata principles should not apply when the prior proceeding did not "afford[] a full and fair opportunity to litigate the issue." (*Gouvis Engineering v. Superior Court* (1995) 37 Cal.App.4th 642, 650.)

Here, the issues in the civil complaint are identical to the ones resolved in our ruling denying the 2006 habeas petition—i.e., Quillar's claim that (contrary to the notations in the minute orders) he was not present at three pretrial criminal hearings, and his request that he be provided with reporter's transcripts for these hearings.[4] Further, the

---

4 We note that the allegations in the civil complaint concerning the request for transcripts are *not* premised on the right to access public records upon payment of required fees, but rather are premised on a criminal defendant's right to free reporter's transcripts as a matter of due process. This is the same right at issue in the habeas petition.

party against whom the res judicata doctrine is being asserted—Quillar—is the same in both proceedings. The question is whether the denial of the habeas petition (1) equates with a final judgment on the merits, and (2) constitutes an actual litigation of the issues comporting with due process so as to warrant application of res judicata principles. We conclude that under the circumstances of this case, these requirements are satisfied.

A habeas petition may be resolved by a summary denial of the petition when the court determines the petitioner has not presented a prima facie case for relief. (*People v. Duvall* (1995) 9 Cal.4th 464, 474-475; *Younan v. Caruso* (1996) 51 Cal.App.4th 401, 407-408 (*Younan*).) If a prima facie case is presented, the court issues an order to show cause which permits both parties to submit pleadings and, if needed, allows for an evidentiary hearing. (*Younan, supra,* at pp. 407-408.) Once an order to show cause is issued, the court is required to issue a written opinion when ruling on the petition. (*Id.* at p. 408.)

A court's denial of a petition for writ of habeas corpus is not given res judicata effect on a subsequent petition for a writ of habeas corpus. (See *In re Clark* (1993) 5 Cal.4th 750, 773; *In re Crow* (1971) 4 Cal.3d 613, 621, fn. 8.) This rule is based on such considerations as the petitioner's inability to seek review of a denial of a habeas petition and the summary procedures that may be used in habeas proceedings. (See *In re Clark, supra,* 5 Cal.4th at p. 773; *In re Crow, supra,* 4 Cal.3d at p. 621, fn. 8; cf. *People v. Pacini* (1981) 120 Cal.App.3d 877, 883-887 [law of case did not apply to bar consideration of issue on appeal which had previously been addressed in denial of habeas relief].)

Nevertheless, to prevent abuse of the habeas writ and preserve the finality of judgments, the courts have developed the rule that a defendant is not permitted to bring a successive habeas petition before the same court based on a claim that was, or could have been, presented in a previous petition, unless there are new facts or law that could not have been previously presented or a fundamental miscarriage of justice has occurred. (*In re Clark, supra*, 5 Cal.4th at pp. 774-775, 797; *Younan, supra*, 51 Cal.App.4th at pp. 410-411.) Further, to pursue a habeas petition before the California Supreme Court, the defendant must show good cause for any substantial delay in filing the petition. (*In re Sanders* (1999) 21 Cal.4th 697, 701, 703.) Moreover—relevant here—when a defendant brings a *civil suit* raising the same issues as were previously raised and determined in a proceeding denying habeas relief, collateral estoppel may, in proper circumstances, apply. (*Younan, supra*, 51 Cal.App.4th at pp. 412-413.) In *Younan*, the court gave collateral estoppel effect to an issue decided in the denial of a habeas petition under circumstances where an order to show cause was issued and an evidentiary hearing held in the habeas proceeding. (*Id.* at pp. 413-414, & fn. 7 [habeas finding that defense counsel was not ineffective barred civil suit for defense counsel's civil negligence].)

When ruling on Quillar's 2006 habeas petition, we did not issue an order to show cause or hold an evidentiary hearing. However, we did determine the issues on their merits. As recognized in *Clark*, the summary denial of a habeas petition based on a finding that there was no prima facie case for relief is a determination on the merits. (*In re Clark, supra*, 5 Cal.4th at pp. 769-770 & fn. 9.) Further, our written ruling denying the habeas petition reflects that we adjudicated the same issues that are now presented in the

civil complaint. Our written habeas ruling shows that we reviewed the petition under the standard applicable to successive habeas petitions and concluded there was no fundamental miscarriage of justice. When doing so, we examined the contents of the minute orders associated with the three hearings and we denied the request for the reporter's transcripts. As a matter of judicial policy, Quillar could not have pursued another habeas petition before our court on the same issues, nor could he have pursued a belated habeas petition before the California Supreme Court on the same issues. Our ruling on the 2006 habeas petition constituted a final determination on the merits that Quillar was not entitled to relief based on his claim that he was not present at the three hearings and his request that he should be provided with the transcripts.

Further, although the habeas petition was denied without an order to show cause or evidentiary hearing, this summary procedure was utilized because of the interplay between appellate and habeas proceedings in criminal cases. The primary means to challenge a criminal conviction is by appeal, and only limited collateral attack is permitted in a subsequent habeas proceeding. (See *In re Clark*, *supra*, 5 Cal.4th at pp. 765-767.) Quillar had the opportunity to challenge his convictions via the appellate process, and he was given a second, limited opportunity to file a habeas petition raising issues that were not raised on appeal. Quillar was represented by appellate counsel after his conviction, and appellate counsel did not raise any issues concerning the three hearings on appeal or in a habeas petition, and saw no need to request reporter's transcripts for these hearings. Nevertheless, Quillar had the right to file his own habeas petition, and he exercised his right to do so. Thus, he has had a full opportunity to

adjudicate the issue of his presence at the three hearings and any need for reporter's transcripts for these hearings. Given the right to a full review of the criminal trial on appeal and the ancillary role played by the habeas process, our denial of the habeas petition is properly deemed an actual litigation of the issues determined therein.

Policy considerations also support application of collateral estoppel to the civil complaint. (See *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 342-343 [policies underlying collateral estoppel are relevant to decide whether the doctrine should be applied in a particular setting]; *In re Crow, supra*, 4 Cal.3d at p. 623.) Res judicata principles are "intended to preserve the integrity of the judicial system, promote judicial economy, and protect litigants from harassment by vexatious litigation." (*Vandenberg v. Superior Court*, *supra*, 21 Cal.4th at p. 829.) The minute orders at issue in Quillar's habeas petition and the civil complaint are free from any facial sign of irregularity or violation of due process. They show three successive pretrial hearings where Quillar was present, and where he was, successively, allowed to represent himself, then was appointed advisory counsel, and then was reinstated to represented status. Quillar's appellate counsel apparently did not see any issues of concern related to these hearings, and we saw no issues of concern when reviewing Quillar's habeas petition.

Now Quillar again seeks to raise the same issues by filing a civil complaint. Instead of claiming that the trial judge "manipulated court documents" to reflect his presence at the hearings, he now alleges that the court clerks falsified the minute orders. The interests of justice are not served by allowing a defendant to raise repeated challenges to the propriety of criminal proceedings based merely on claims that court

personnel falsified court documents. The policies of protecting the integrity of the judicial system, promoting judicial economy, and discouraging vexatious litigation support application of collateral estoppel to bar this repetitive litigation.

Finally, the collateral estoppel bar operates here even though the defendants in the civil complaint are different than the respondent in the habeas petition, and even though Quillar has included new matters in the civil complaint that were not included in the habeas petition. The party raising the collateral estoppel bar need not necessarily have been a party or in privity with a party at the prior proceeding, as long as the party *against whom* the doctrine is invoked was a party or in privity with a party at the prior proceeding. (*Bernhard v. Bank of America* (1942) 19 Cal.2d 807, 812-813; *Takahashi v. Board of Education* (1988) 202 Cal.App.3d 1464, 1477; *Barker v. Carver* (1956) 144 Cal.App.2d 487, 491.) This nonmutuality rule is premised on the recognition "that it would be unjust to permit one who has had his day in court to reopen identical issues by merely switching adversaries." (*Bernhard v. Bank of America, supra,* 19 Cal.2d at p. 813.) Quillar's allegations against the court personnel in the civil complaint are based on the same issues—his claimed absence from the hearings and request for transcripts—for which we denied relief in our habeas ruling. Because Quillar has raised the same issues and merely switched his adversaries, collateral estoppel properly applies.

Similarly, the new matters in the civil complaint concern the same issues that were resolved in the habeas petition, and thus they do not serve to avoid the collateral estoppel bar. (See *Lucido v. Superior Court, supra,* 51 Cal.3d at p. 342; *People v. Sims, supra,* 32 Cal.3d at p. 485; *Border Business Park, Inc. v. City of San Diego* (2006) 142 Cal.App.4th

1538, 1566.) In the civil complaint, Quillar added allegations that court clerks (rather than the judge) falsified information in the court documents for the three hearings to show that he was present and violated his rights by denying him access to the reporter's transcripts for these hearings. He also added a request that the court personnel submit affidavits attesting to the truth or falsity of what they recorded. Again, these new matters are based on the same issues of his claimed absence from the hearings and request for reporter's transcripts, which we determined in the habeas ruling do not warrant relief. Because the new matters in the civil complaint are based on already-resolved issues, they do not provide a basis for further litigation.

Given our holding on collateral estoppel grounds, we need not address the other grounds for the trial court's ruling. We also are unpersuaded by Quillar's contentions that his due process rights were violated during the course of the proceedings before the trial court and in conjunction with this appeal.

DISPOSITION

The judgment is affirmed.

HALLER, J.

WE CONCUR:

McCONNELL, P. J.

AARON, J.